
ANTI-MONEY LAUNDERING IN DIGITAL CURRENCIES

ANALYSIS AND RECOMMENDATIONS

Digital currencies can be a magnet for money laundering and criminal conduct. Global regulation is not keeping pace with changes in technology, and virtual currencies and electronic platforms do not easily fit within existing legal principles.

How can digital currency platforms be regulated to detect money laundering and illicit financial flows?

Australia must extend the AML/CTF legislation to cover these platforms.

WHAT IS THE PROBLEM?

“Globally, money laundering is a key enabler of transnational, serious and organised crime. Every year, criminals generate huge amounts of funds from illicit activities, including among other things, drug trafficking, tax evasion, theft, fraud and corruption.”¹

“The pursuit of illicit profits comes at a significant cost to the Australian economy. In 2014, the Australian Criminal Intelligence Commission estimated that serious and organised crime costs Australia \$36 billion per year.”²

Australia is a founding member of the Financial Action Task Force (FATF), the global standard setter for anti-money laundering (AML) and counter-terrorist financing (CTF). In the last two years FATF amended guidance surrounding growing money laundering risks in virtual assets – such as digital currency, stating only international co-operation can tackle the problem given the cross-border nature of virtual asset service providers’ activities.³

¹ Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill

2019, Explanatory Memorandum, page 54.

² Ibid.

³ FATF, *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, Paris, June 2019, page 4

WHAT ARE THE RISKS?

In June 2019, Facebook announced 'Libra', a digital private currency using blockchain technology, with 'Calibra' its digital wallet Facebook's intention is to make funds easily accessible across the globe by anyone with a cell phone or access to the internet.⁴ Libra's value will be tied to a basket of the world's major government-issued currencies making it a stablecoin and fundamentally different to digital currencies such as Bitcoin.

If spread across Facebook's platform (currently utilized by 1.56 billion users) the potential impact of Libra is significant with the most positive impact likely in undeveloped countries, where much of the population does not have access to banking.

The World Bank Group's *The Global Findex Database 2017*, states 1.7 billion adults remain "unbanked"⁵. In 2017, an estimated 1.1 billion of these owned a cell phone or had access to the internet. Thus, these people could save, send and spend Libra as part of every-day transactions - but can they make informed decisions and understand data privacy risks?

"At a minimum, the Libra usage may depress traditional banking fees, ensuring cheaper and faster traditional banking."⁶ However, given Facebook's previous thin track record on helping the poor and minority groups⁷, there are questions whether they are an appropriate provider of international currency services⁸. Given global regulation is not keeping pace with changes in technology, and virtual currencies and electronic platforms do not easily fit within existing legal principles, how can this mega currency platform be regulated to detect money laundering and illicit financial flows?⁹

Therefore regulators, under pressure by digital currencies such as Libra, need to embrace technological innovation while ensuring rights and security are not compromised. Thus, the drive for leading innovation is counter-balanced with the need to effectively and fully protect the public.¹⁰

Digital currencies can be a magnet for money laundering and criminal conduct. Liberty Reserve¹¹ and Silk Road¹², are internet platform examples where illegal goods and services were purchased using digital currencies preserving anonymity and disguising funds' origins. Digital currencies that allow anonymity, even if based on legitimate funds, can also be used for illegal activities, such as for payment of child exploitation material online.

Libra, though not designed to allow anonymity, poses different risks given its global scope and reach putting it outside national controls. Knowing who is buying Libra currency is essential to prevent dirty money from entering the global financial system. The problem is that not all countries adhere to or implement the FATF recommendations and if dirty digital currency gets into the financial system through weak national oversight, it will spread quickly, globally.

⁴ Richard Chesley and Oksana Koltko Rosaluk, "The Libra Digital Currency Project: The (Long) Path Forward"; <https://www.israelglobalgateway.com/2019/10/the-libra-digital-currency-project-the-long-path-forward/>

⁵ Meaning without an account at a financial institution or through a mobile money provider

⁶ Chesley and Rosaluk, op cit

⁷ Congress pillories Zuckerberg over Libra cryptocurrency ; <https://www.cnet.com/news/congress-pillories-zuckerberg-over-libra-cryptocurrency/>

⁸ Facebook is to pay a record fine of USD5 billion levied by the Federal Trade Commission for breach of its consumers' privacy, including the use by Cambridge Analytica of personal data obtained from Facebook: see <https://www.bbc.com/news/business-49099364>

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¹⁰ Chesley and Rosaluk, op cit

¹¹ See e.g. https://sherloc.unodc.org/cld/case-law-doc/cybercrimetype/usa/2014/us_v_liberty_reserve_et_al..html

¹² See e.g. <https://www.investopedia.com/terms/s/silk-road.asp>

WHAT IS AUSTRALIA (NOT) DOING?

Regulation of digital currency exchanges in Australia is not as robust as it should be with the major weakness being regulation at the point where digital currency intersects with the mainstream financial system, i.e. exchange of digital currency to legal tender. Unlike remittance dealers, Australia's financial regulator, AUSTRAC, does not regulate the operation of digital electronic platforms where currencies convert. This means if the exchange operates outside of the required geographical link with Australia or it uses a platform offered in Australia from overseas, it is arguably not covered by the AML/CTF Act requirements. Digital to digital conversion is not covered at all.

Digital currency will increasingly be a part of the financial landscape with Sweden, Singapore, Canada and China exploring and developing their own currencies. Therefore the ease of moving large amounts of money globally, and unchecked, may get a whole lot easier.

Australia's move towards introduction of a \$10,000 cash limit for transactions between businesses and individuals may decrease the risk of money laundering in cash, but money laundering risks associated with digital currencies will continue and increase through displacement from the cash economy.¹³

Governments and international bodies must adopt an aggressive global response required to fix the money laundering risks linked to the increase in digital currency, such as Libra. Meaningful regulation will require bipartisanship at the domestic level and an effective international framework. "A sole Australian regulatory response would be futile. An international response is needed."¹⁴

It is unlikely that FATF alone can provide such a response as it relies on national authorities for implementing AML/CTF rules in their jurisdictions through national laws, whilst FATF promotes global implementation of its standards.¹⁵

THE AUSTRALIAN GOVERNMENT MUST

- urgently rectify existing deficiencies in domestic AML/CTF regulation; and
- make the economy more resilient to the risks in digital currencies.

¹³ See the *Currency (Restrictions on the Use of Cash Bill) 2019* and the draft *Currency (Restrictions on the Use of Cash – Excepted Transactions) Instrument 2019*. Under the latter, digital currency is proposed to be exempted from the restriction.

¹⁴ [Dennis Martin, Snedden Hall & Gallop, https://www.shglawyers.com.au/the-new-regulatory-environment-for-data-capture/](https://www.shglawyers.com.au/the-new-regulatory-environment-for-data-capture/)

¹⁵ FATF, "Money laundering risks from "stablecoins" and other emerging assets", <https://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-virtual-assets-global-stablecoins.html>

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